"UN-REPORTABLE"

* **HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) No.1122/2004

Judgment reserved on : 17th August, 2007
Date of decision : 3rd September, 2007

M/S. INDIAN HOTELS COMPANY LTD.
..... PLAINTIFF

! Through : Mr. M. Singh, Advocate

Versus

$ MR. V.P. RAHAVENDRA
..... DEFENDANT

^ Through : Nemo.

%

CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not?

(3) Whether the judgment should be reported in the Digest ?

ARUNA SURESH, J.

1. Present suit has been filed by the plaintiff company for recovery of Rs.29,27,234/- against the defendant.

2. Briefly narrated the case of the plaintiff is that Mr. Arvind Bhargava, Manager (Legal) of the plaintiff company is duly constituted attorney and is authorized and competent to sign and institute the suit on behalf of the plaintiff company

as well as to file vakalatnama. Defendant stayed at Taj Mahal Hotel run by the plaintiff company at New Delhi for the period from 19th March, 2001 to 4th September, 2001. Plaintiff raised a bill for Rs.28,66,916/- against which the defendant made part payment of Rs.8,27,032/- leaving the balance amount of Rs.20,39,884/-. Defendant issued two cheques bearing No.58803 dated 9th July, 2001 for Rs.10,00,000/- drawn on Global Trust Bank, Adayar, Chennai and another cheque bearing No.121844 dated 31st August, 2001 for Rs.9,00,000/- drawn on Global Trust Bank, South Extension, Part-II, New Delhi. Both the cheques on presentation were dishonoured vide memos dated 21st September, 2001 and 26th September, 2001 respectively. Defendant was informed vide notice dated 24th September, 2001 and 27th September, 2001 respectively about the dishonourment of the cheques. These cheques on repeated presentations were returned back dishonoured.

3. On 12th June, 2001 defendant made a false representation that he would credit a sum of Rs.19.3 lacs in the account of the plaintiff by the afternoon of 13th June, 2001 but no such credit was made. On 16th June, 2001 the defendant handed over a cheque bearing No.59014 dated 16th June, 2001 for a sum of Rs.16,80,000/- with understanding

that the said cheque would not be presented to the Bank and he would pay a sum of Rs.1,20,000/- in cash by 27th June, 2001 and issue a demand draft for Rs.18,00,000/- on 28th June, 2001 but defendant failed to deposit the amount or issue the draft.

4. On 2nd July, 2001 defendant issued two cheques bearing No.058802 and 058803 for a sum of Rs. 10,00,000/- each drawn on Global Trust Bank, Chennai and took back cheque bearing No.059014 with an assurance that those two cheques should not be presented for payment and he would make payment by demand draft on 6th July, 2001 and 10th July, 2001 respectively. Subsequently, on the assurance of the defendant, cheque No.058803 dated 9th July, 2001 for Rs.10,00,000/- was presented by the plaintiff company on 19th July, 2001 to the bankers for encashment. Despite assurances defendant did not make any payment and asked for return of the same with assurances that he would issue a demand draft for Rs.10,00,000/- on 26-27th July, 2001. Defendant assured that he would make full payment by 2nd August, 2001 but no such payment was made. Defendant also assured on 9th August, 2001 and 14th August, 2001 for clearing the dues by 16th August, 2001 but no such payment was made. Similar assurances were also made on 20th August,

2001 for making payment by demand draft for Rs.9,68,000/- on 20th August, 2001 and another draft of Rs.10,00,000/- on 27th August, 2001 but he failed to make payment.

5. On 24th August, 2001 defendant informed plaintiff company that he had deposited a cheque of Rs.10,00,000/- in his account and issued two cheques bearing No.121843 dated 27th August, 2001 for Rs.95,000/- and a cheque No.121844 dated 31.08.2001 for Rs.9,00,000/- respectively. Cheque No.121843 on presentation was dishonoured on 28th August, 2001.

6. Defendant finally left the hotel on 4th September, 2001. Despite assurances that he would clear half of the amount by 8th September, 2001, nothing was paid to the plaintiff company. Defendant continued to make assurances for making the payment of the balance amount by way of demand draft on 17th September, 2001, 20th September, 2001 and 12th October, 2001 but he failed to make any payment. Plaintiff company issued a legal notice of demand on 8th October, 2001 which was duly served upon the defendant and when defendant failed to make the payment, plaintiff company filed a complaint under Section 138 of the Negotiable Instruments Act read with section 420 of the

Indian Penal Code. After the filing of the criminal complaint, defendant sent three cheques bearing Nos. 017214, 017215 and 017216 dated 15th January, 2002, 29th January, 2002 and 12th February, 2002 for Rs.7,00,000/-, Rs.7,00,000/- and Rs.9,00,000/- amounting to Rs.23,00,000/- to the plaintiff company in part discharge of the liability which included interest. However, all the three cheques were dishonoured on presentation for want of funds. Plaintiff company has claimed a sum of Rs.20,39,884/- as principle amount due from the defendant and also interest @ 18% per annum, amounting to Rs.8,87,350/-. In all plaintiff company has claimed a sum of Rs.29,27,234/- which the defendant failed to pay. Hence, the present suit.

7. Defendant was served for 6th September, 2005 by courier service as per the affidavit of the plaintiff company though he could not be served by other means. Defendant infact has refused to receive the process on his third address. On 6th October, 2005 Shri S.K. Aggarwal Advocate appeared on behalf of the defendant. Thereafter none appeared on behalf of the defendant on 23rd January, 2006 and 2nd February, 2006. Hence on 2nd February, 2006 defendant was ordered to be proceeded ex-parte.

8. Mr. Arvind Bhargava, Manager (Legal) of the plaintiff company as PW1 has filed his affidavit in evidence. He also filed additional affidavit in evidence on 20th September, 2006.

9. In his additional affidavit filed on 20th September, 2006 PW1 Arvind Bhargava proved the Power of Attorney Ex.PW1/1 executed by the Director, Vice President and Company Secretary of the plaintiff company authorizing him to sign and verify the plaint and institute the present suit on behalf of the plaintiff company. Therefore, the suit has been instituted by a duly authorized person on behalf of the plaintiff company.

10. He has proved the signature of Mr. Rajiv Tyagi, Credit Manager of the plaintiff company on the bills raised against the defendant for his stay in Taj Mahal Hotel for the period from 19th March 2001 to 4th September, 2001 by the plaintiff company against the defendant for Rs.28,66,916/- as Ex.PW1/4 (colly). The original bills were handed over to the defendant. From his testimony it is proved that the defendant paid a sum of Rs.8,27,032/- leaving an outstanding balance of Rs.20,39,884/- which the defendant never paid as is clear from the statement of accounts Ex.PW1/3.

11. Plaintiff company has also proved by way of testimony of Mr. Arvind Bhargava that the defendant had issued cheques bearing No.58803 dated 9th July, 2001 for Rs.10,00,000/- and a cheque bearing No.121844 dated 31st August, 2001 for Rs.9,00,000/- Ex.PW1/5 and Ex.PW1/6 which on presentation were dishonoured vide memos Ex.PW1/7 and Ex.PW1/8 by the concerned bankers i.e. Global Trust Bank at Chennai and South Extension Part-II, New Delhi respectively. Two notices dated 24th September, 2001 Ex.PW1/9 and 27th September, 2001 Ex.PW1/11 served upon the defendant informing him of dishonouring of the cheques. But despite service of notices, the defendant did not make any payment.

12. It has come in evidence that complaint under Section 138 of the Negotiable Instruments Act read with section 420 IPC was filed against the defendant.

13. It is also proved that on 12th June, 2001 though the defendant represented that he would credit a sum of Rs.19.3 lacs in the account of the plaintiff company by the afternoon of 13th June, 2001 but no such money was credited. Plaintiff has placed on the record and proved in evidence cheque bearing No.59014 dated 16th June, 2001 for Rs.16,80,000/- which was issued by the defendant in the name of the plaintiff

company with a direction not to present the said cheque for encashment. However, on 26th June, 2001 the defendant assured that he would pay a sum of Rs.1,20,000/- in cash by 27th June, 2001 and would issue a demand draft for Rs.18,00,000/- on 28th June, 2001 failing which the plaintiff would entitle to present the said cheque. However, the said cheque was returned back to the defendant on his request.

14. It has further come in evidence that when defendant failed to make the payment due from him and misrepresented the plaintiff company every time that he would make the payment and cheques issued were dishonoured, the plaintiff company filed a criminal complaint under Section 138 of the Negotiable Instruments Act read with section 420 of the Indian Penal Code. After filing of the criminal complaint the defendant again issued three cheques bearing No.017214, 017215, 017216 dated 15th January, 2002, 29th January, 2002 and 12th February, 2002 for Rs.7,00,000/-, Rs.7,00,000/- and Rs.9,00,000/-, totaling Rs.23,00,000/- to the plaintiff company in part discharge of the said liability. All the three cheques on presentation were dishonoured vide memos Ex.PW1/47 to PW1/50. Plaintiff has placed on the record two dishonoured cheques bearing No.017214 and 017216 dated 15th January, 2002 and 12th February, 2002 for Rs.7,00,000/- and

Rs.9,00,000/- and proved them in evidence as Ex.PW1/45 and Ex.PW1/46. However, in the affidavit Mr. Arvind Bhargava has stated that the third cheque bearing No.017215 dated 29th January, 2002 for Rs.7,00,000/- was not returned back by the bank for which the plaintiff had written a letter dated 23rd May, 2002 is Ex.PW1/51 (copy).

15. From the entire evidence adduced on the record by the plaintiff company in the absence of any other evidence to the contrary it is proved that the defendant availed all the services and facilities while staying in Taj Mahal Hotel owned by the plaintiff company for the period from 19th March 2001 to 4th September, 2001 as per the statement of accounts Ex.PW1/3 and the bills Ex.PW1/4 (colly). The bills raised by the plaintiff company against the defendant were to the tune of Rs.28,66,916/-, however, the defendant has paid only a sum of Rs.8,27,032/-, therefore, the plaintiff company is entitle to the balance amount of Rs.20,39,884/-. Besides this, plaintiff company has also claimed interest @ 18% per annum from the date of the bills upto the date of the filing of the suit on the balance amount which comes to Rs.8,87,350/-. The plaintiff in all is entitled for a sum of Rs.29,27,234/- as claimed.

15. Hence, I hereby pass a decree for Rs.29,27,234/- with costs of the suit in favour of the plaintiff and against the defendant. The plaintiff company is also awarded pendentilite and future interest @ 18 % per annum on the principal amount of Rs.20,39,884/- from the date of the filing of the present suit till the date of realization.

16. Decree sheet be prepared accordingly.

SEPTEMBER 3, 2007 **ARUNA SURESH**
vk **(JUDGE)**